

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 75

CHILD AND ADULT FOOD CARE PROGRAM

Subchapter 1

General

Rule	37.75.101	Definitions
	37.75.102	Civil Rights
		Rules 03 and 04 reserved
	37.75.105	Head Start Categorical Eligibility
		Rules 06 and 07 reserved
	37.75.108	Advances
	37.75.109	Audit Grants

Subchapter 2

Sponsors

	37.75.201	Day Care Home Sponsoring Organizations
	37.75.202	Tiering Changes
		Rules 03 and 04 reserved
	37.75.205	Provider Enrollment
	37.75.206	Recruitment
		Rules 07 and 08 reserved
	37.75.209	Changing Sponsoring Organization

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

Subchapter 3

Food Requirements

Rule	37.75.301	Menu Evaluation
	37.75.302	Infant Meal Reimbursement
	37.75.303	Combination Foods

Subchapter 4

Records

	37.75.401	Training and Training Records
	37.75.402	Milk Production Records
	37.75.403	Recipes Required

Subchapter 5

Reviews

	37.75.501	Reviews of Day Care Home Sponsoring Organizations
	37.75.502	Reviews of Centers and Sponsors of Centers

Subchapter 6

Enforcement

	37.75.601	Appeals and Fair Hearings
	37.75.602	Corrective Action Plan
	37.75.603	Termination and Re-enrollment of a Day Care Home Provider

Subchapter 1

General

37.75.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active recruitment" means direct contact initiated by a sponsoring organization with a day care home currently participating with another sponsor for the purpose of soliciting a provider to enroll with any particular sponsoring organization. Examples of direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through email, through a mailing or through a newsletter disseminated by a sponsoring organization to CACFP participants that it does not sponsor.

(2) "Administrative funds" means USDA child and adult care food program (CACFP) grant funds distributed to qualifying non-profit sponsoring organizations contracting with the department to administer the CACFP.

(3) "Advanced payment" means funds made available to an entity for its CACFP costs prior to the month in which such costs will be incurred.

(4) "Adverse administrative action" means an action taken by the state CACFP in the administration of the CACFP having a negative impact, including the following:

- (a) denial of the entity's application for participation;
- (b) denial of an application submitted by a sponsoring organization of centers on behalf of a facility;
- (c) termination or suspension of an entity from participation in CACFP;
- (d) denial of an entity's application for start-up funds;
- (e) denial of an entity's application for advance payment;
- (f) denial of all or part of an entity's claim for reimbursement, provided the claim was submitted in a timely manner;
- (g) denial by the state agency to forward to food and nutrition services (FNS) an exception request by the entity for payment of a late claim or a request for an upward adjustment to a claim; or
- (h) demand for the remittance of an overpayment against an entity.

(5) "Announced visit" means a site visit that occurs after forewarning.

(6) "Authorized capacity" means the number of children that a licensed child care center or day care home is able to have in care at any one time including overlap.

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

(7) "CACFP" means the child and adult care food program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766).

(8) "Center" means a child care center, adult day care center, outside-school-hours care center, special after school snacks center, head start center or a proprietary center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time.

(9) "Combination food" means an entree with more than one CACFP required food component included in its ingredients.

(10) "Corrective action plan" means a plan, approved by the department, indicating the actions to be taken by an entity for the purpose of correcting a deficiency or addressing a problem.

(11) "Day care home" means a family or group day care home as those terms are defined in 52-2-703, MCA.

(12) "Department" means the department of public health and human services.

(13) "Disciplinary action" means an action taken for the purpose of modifying behavior or correcting a situation or circumstance.

(14) "Elementary school" means any school serving children in grades K through 8.

(15) "Entity" means a sponsoring organization or center.

(16) "Institution" means a sponsoring organization, child care center, outside-school-hours care center or adult day care center which enters into an agreement with the department to assume final administrative and financial responsibility for CACFP operations.

(17) "Licensing staff" means department personnel who enforce state laws and rules for the purpose of licensing and regulation of child care providers.

(18) "Processed meats", for purposes of the CACFP, means hot dogs, corn dogs, sausage, and food of this type, but does not include ground meats such as hamburger or cured meat such as ham.

(19) "Program" means the child and adult care food program.

(20) "Proprietary center" means a qualifying child care center participating in the CACFP as a for-profit center and is either:

(a) a proprietary Title XX center with at least 25% of enrolled or authorized capacity that is paid from a state-pooled funding source which includes federal Title XX funds; or

(b) a free and reduced price center with at least 25% of its enrollment or authorized capacity that is in the free and reduced price category.

(21) "Provider" means the persons providing care in a family or group day care home.

(22) "School attendance area" means the specific geographical area whose student population is served by a specific elementary school.

(23) "Seriously deficient" has the same meaning as "seriously deficient" in 7 CFR 226.2, the definitions pertaining to CACFP, which is hereby adopted and incorporated into this rule. A copy of 7 CFR 226.2 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(24) "Sponsoring organization or sponsor" means an organization under contract with the department that is responsible for the administration of the CACFP at various facilities.

(25) "Tiering" means categorizing day care homes based on established criteria for income standards, school designation, and census block numbering area.

(26) "Title XX" means Title XX of the Federal Social Security Act.

(27) "USDA" means the United States department of agriculture. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03; AMD, 2004 MAR p. 577, Eff. 3/12/04.)

37.75.102 CIVIL RIGHTS (1) The CACFP is a federal program and all participants must comply with Title VI of the Civil Rights Act of 1964. The full description of participant responsibilities is set forth in the civil rights section of the CACFP Manual, and is hereby adopted and incorporated by this reference. A copy of the CACFP manual section is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(2) The CACFP is a federally funded program which requires the inclusion of the USDA nondiscrimination statement and an appropriate statement of equal opportunity to be used in all informational materials disseminated to the public. The following complete nondiscrimination statement must be included in all informational materials disseminated to the public wherever possible:

(a) "In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability."

(b) "To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

(3) If the material is too small to permit the full statement to be included (i.e., brochures, coupons, electronic benefit cards, flyers, and other media of less than a page) the material will, at a minimum, include USDA's short nondiscrimination statement, as follows: "THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER." (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Rules 03 and 04 reserved

37.75.105 HEAD START CATEGORICAL ELIGIBILITY (1) A child enrolled in a head start organization that is participating in the CACFP as a day care center or sponsor of centers is categorically eligible for the CACFP if the child is enrolled in the head start program on the basis of a determination that the child is a member of a family that meets the low income criteria, including those children who are automatically eligible for a second year of head start based on low income.

(2) For CACFP documentation purposes, the head start participants eligible for meal reimbursement may be listed with a statement certifying that they are enrolled in head start on an income eligible basis. This list is to be signed each month by a head start official authorized to act on behalf of the organization.

(3) Children who participate in head start, but who are not determined to be income eligible for head start need to complete a CACFP income eligibility form in order to be considered for free or reduced price meals for CACFP.

(4) An alternative enrollment form may be used if the alternative enrollment form includes all of the information listed below provided the form has been approved by the state department: The information required by the alternative enrollment must include:

- (a) name of child;
- (b) adult signature and date of signature;
- (c) social security number of signing adult;
- (d) number of members in the household;
- (e) monthly or annual household income; and
- (f) determination of CACFP eligibility. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Rules 06 and 07 reserved

37.75.108 ADVANCES (1) The department may, in its discretion, decide whether to advance a payment. The amount of any advance payment will be based on the historical payment data for the specific entity. Any and all advance payments will be repaid to the department prior to the beginning of the next fiscal year. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.109 AUDIT GRANTS (1) An entity may be eligible to receive a grant from the department for the purpose of reimbursing an entity for all or part of the CACFP portion of an audit. To qualify for a grant, an entity must meet the following minimum requirements:

(a) An audit must be a condition for participation or continued participation in the CACFP.

(b) The professional services of the auditor or auditors must be performed in accordance with all applicable state and federal laws, regulations, and policies relating to purchasing and professional services acquisition.

(c) Prior to beginning an audit, the entity must submit to the department for approval:

(i) a completed request for reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal office of management and budget (OMB) circular A-133 and the USDA OMB supplement for the catalog of federal domestic assistance (CFDA) 10.558, child and adult care food program, dated March 2002;

(iii) a completed copy of a federal debarment and suspension certificate, signed by the auditor engaged to perform the audit; and

(iv) evidence the supervising auditor is a certified public accountant.

(d) Prior to beginning the audit, the entity must:

(i) provide a copy of the current state CACFP audit policy to the auditor engaged to perform the audit; and

(ii) obtain written approval for the audit from the department;

(e) The audit must be completed no later than nine months after the end of the fiscal year being audited.

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

(2) If an audit grant is awarded, the entity must submit to the department within 30 days following completion of the audit:

(a) two copies of the audit (including management letters referenced in the audit report);

(b) a copy of the final invoice from the auditor, documenting the cost of an OMB circular A-133 audit; and

(c) a time log documenting actual direct costs of auditing the program.

(3) The department may authorize a grant for up to the actual direct cost of auditing the program. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 2

Sponsors

37.75.201 DAY CARE HOME SPONSORING ORGANIZATIONS (1) The Montana CACFP sets geographical boundaries of operation for sponsors. Boundaries are set based on financial viability and need for services. Geographical boundaries follow county lines.

(2) In any area of the state where at least two day care home sponsors are currently available to all program participants, additional sponsor applications are not available.

(3) If a provider would be more efficiently served by a sponsor in an adjacent service area, the service areas may be adjusted if this arrangement is by mutual consent between the affected sponsors, and prior written approval is obtained from the department.

(4) An application for a new sponsorship of family day care homes includes the following:

(a) written acknowledgment of the criteria for family day care home (FDCH) organizations;

(b) an FDCH sponsor proposal; and

(c) an oral presentation.

(5) In order to be eligible to participate in the Montana CACFP FDCH, a prospective sponsor must demonstrate:

(a) need for the services to be performed;

(b) the service area to be served under the new sponsor's plan; and

(c) financial capability, accountability, and viability as well as capability in program operations.

(6) A prospective sponsor must complete the written proposal, orientation training, oral presentation and Montana CACFP training and have been approved for each requirement before becoming a sponsoring organization. The prospective sponsor must be a non-profit organization maintaining a tax-exempt status with the internal revenue service.

(7) The prospective sponsor must submit a list of potential registered and operating day care providers who are not presently served by a FDCH sponsor in the planned area of operation in order to demonstrate need for the services to be provided.

(8) A sponsor may provide assistance to a day care home that has identified licensing or registration deficiencies, provided prior approval is obtained from the department.

(9) In the event that a sponsoring organization discontinues or becomes disqualified from continued participation in the CACFP, the department shall provide the day care homes being served by the terminating sponsorship with a list of alternate sponsoring organizations available in the service area. The day care homes will be permitted 30 days to select a new sponsoring organization. If a day care home fails to select a new sponsor within 30 days, the department shall assign a new sponsor to be selected on a random basis from among those qualified in the service area. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.202 TIERING CHANGES (1) A sponsor shall claim meals for purposes of reimbursement for the day care homes under its sponsorship once per month for any one category of tiering.

(2) A change in tier status resulting from new data, such as census, income information, or elementary school information distributed for sponsor evaluation, is effective statewide the first day of the month during which the income information, census, or elementary school information is available to the sponsoring organization.

(3) A day care home may submit a request for a tier change evaluation to its sponsoring organization. If approved, the change will be effective as noted below:

(a) changes based on elementary school attendance area or census block are effective on the first of the month during which the evaluation request is received, except as provided in (3)(c);

(b) changes based on income fluctuations or relocation of the provider are effective on the first day of the month that the evaluation request is documented and verified; and

(c) a change made as a result of an investigation or to correct a tiering error will be retroactive to the date of the error. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Rules 03 and 04 reserved

37.75.205 PROVIDER ENROLLMENT (1) A sponsor shall complete the following when enrolling a new day care home:

(a) obtaining Montana CACFP pre-approval prior to performing a pre-approval visit, and performing a pre-approval visit at the day care home prior to the day care home beginning participation in the CACFP. During the pre-approval visit, the sponsor must:

(i) determine that the home is operating as a day care home;

(ii) train the provider regarding CACFP requirements;

(iii) discuss documentation requirements, including posted menus, meals served and attendance records; and

(iv) discuss CACFP procedure, including record retention procedures, and provide training to ensure CACFP compliance.

(b) at the time of the pre-approval visit, obtain either:

(i) a copy of the registration certificate indicating the home is currently registered to provide day care services; or

(ii) written documentation from licensing staff indicating the provider has submitted all required information and has been approved for registration; or

(iii) documentation from licensing staff that a need exists for the use of administrative assistance from a CACFP sponsor which may be used to remedy registration deficiencies.

(2) If a registered day care home is approved by the sponsor during the pre-approval visit, an application and CACFP agreement may be completed and signed. The effective date to begin CACFP participation is the date the application and agreement are signed by the authorized signatories for both the sponsor and the day care home. If the day care home has not yet received a registration certificate from licensing staff, but has been approved by licensing, a screen print from the child care licensing system may be used as interim license verification. The screen print must show proof of registration and the effective date of the registration for the day care home to begin participation in the CACFP.

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

(3) If the location of a day care home changes:

(a) the provider may continue CACFP participation, provided a sponsor pre-approval visit at the new address is conducted within 10 business days following the first day of operation at the new location, the new site is determined acceptable for CACFP participation, and the new site is approved by licensing staff for the provision of child care;

(b) a new CACFP agreement must be signed by both the sponsor and provider and dated on the date of the pre-approval visit if the standards in (3)(a) are met at that time; and

(c) the tiering status of the home must be redetermined.

(4) If a sponsor misdates any document in order to manipulate or circumvent a rule, the sponsor's CACFP contract may be terminated.

(5) A sponsor shall not submit a claim for a day care home which is not registered or approved.

(6) Day care home providers must retain on file the following information:

(a) copies of the signed application and agreement;

(b) notification of reasons and procedures for termination; and

(c) pre-approval visit forms.

(7) If a provider moves or changes their legal name, a new application must be filled out and marked "CHANGE". The change must be identified as a change of status.

(a) If only meal times are changed, a "Meal Time Change" attachment is to be completed and sent in with the current month's claim. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.206 RECRUITMENT (1) A sponsoring organization may not engage in active recruitment of a day care home if that home is participating in the CACFP under a current agreement with any sponsoring organization.

(2) A sponsoring organization may seek to enroll a day care provider that is not currently participating in the CACFP, or has not participated under an agreement for at least 30 days.

(3) If it is determined that a sponsoring organization has engaged in active recruitment, as defined in ARM 37.75.101, the recruiting sponsoring organization will be subject to disciplinary action.

(4) Disciplinary action may include the following:

(a) first violation, a letter of warning stating that a contract violation has occurred;

(b) second violation, a letter warning that a second contract violation has occurred and indicating that the sponsoring organization is considered seriously deficient, and:

(i) the sponsor will be required to submit a corrective action plan; and

(ii) the sponsor will be restricted to recruiting only new providers who are not currently participating in the CACFP under a current agreement with any other sponsoring organization.

(c) if more than two violations occur, the department will issue the sponsoring organization written notice that it is seriously deficient and that the department intends to terminate the CACFP contract.

(5) Simultaneous active recruitment of multiple providers will be treated as a single violation. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Rules 07 and 08 reserved

37.75.209 CHANGING SPONSORING ORGANIZATION (1) A day care provider may be enrolled with only one CACFP sponsoring organization at a time while participating in the CACFP.

(2) Each sponsoring organization must provide a copy of this rule to all participating providers upon enrollment.

(3) Except as provided in (5), a participating day care home may change sponsoring organizations according to these guidelines:

(a) a provider may change sponsoring organizations one time per year, the change to be effective the first day of the month following the notice provided in (3)(b). One time per year means once during the one year period beginning on the date the provider last switched sponsoring organizations.

(b) to change sponsoring organizations, a provider must notify their current sponsoring organization of their intention to change sponsoring organization on or before the fifth working day of the month prior to the month in which the change to a new sponsoring organization is to be effective.

(4) A provider who fails to give timely notification to their sponsoring organization, as required by (3)(b), will continue to be under the current sponsor until the first day of the next later month.

(5) Any provider who is subject to and notified of corrective action by their current sponsoring organization may not change sponsoring organization until the provider has been restored to good standing for a minimum of one calendar month.

(6) A sponsoring organization is not obligated to sponsor any particular provider. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 3

Food Requirements

37.75.301 MENU EVALUATION (1) CACFP participants must ensure that all meals and snacks claimed for reimbursement meet all federal and state minimum standards in accordance with 7 CFR 226.20.

(2) Menu evaluations must be performed at least annually for the purpose of improving the nutritional content of meals served in day care facilities. Sponsoring organizations shall perform menu evaluations of each day care home participating in the CACFP through their sponsorship. The menu evaluation shall include review of menus served over the course of at least one month.

(3) All entities must monitor, verify, document, and ensure that only meals and snacks that meet federal regulations and state minimum standards are claimed for reimbursement. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.302 INFANT MEAL REIMBURSEMENT (1) All meal components required by the USDA infant meal pattern contained in 7 CFR 226.20, which is hereby adopted and incorporated into this rule, must be supplied by the child care provider or center, with the exception of breast milk, for a meal to be eligible for reimbursement. A copy of 7 CFR 226.20 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(2) Except as provided in (6), meals containing breast milk served to infants may be claimed for reimbursement. Other required or optional meal components must be supplied by the child care provider or center. If the parent supplies any meal component other than breast milk, the meal may not be claimed for reimbursement.

(3) Meals containing only breast milk do not qualify for reimbursement if feeding is performed naturally by the mother.

(4) Except as provided in (6), infant formula must be supplied by the child care provider or center for the meal to be eligible for reimbursement. If parents provide infant formula, meals cannot be claimed.

(5) Except as provided in (6), a child care provider or center must provide an infant with iron-fortified formula or soy-based formula if recommended by the infant's parent or the infant's health care provider.

(6) If an infant requires a specialty formula such as nutramigen, pregestimil, alimentum, and lofenalac that is much more expensive or difficult to obtain than a regular infant formula, the provider or center may request that the parent pay the difference between a regular priced formula and the much higher priced formula. If the parents supply the specific formula, in lieu of receipt of cash, the provider or center may credit the parents for the value of the formula the provider or the center would have supplied. A written agreement signed by both the provider or center and the parents indicating how specialty formulas are to be provided must be kept and must be available for review by CACFP staff and auditors.

(7) Whole milk is not allowed as a meal component for an infant who is 12 months or less of age. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.303 COMBINATION FOODS (1) Each day care center or day care home shall list components of combination foods on menus as required by the Montana CACFP. Combination foods include, but are not limited to the following:

- (a) chili (ground turkey/beans);
- (b) chicken casserole (chicken/rice/broccoli); and
- (c) tacos (soft tortilla/ground beef/cheese/lettuce and tomato). The provider or center is responsible for ensuring that combination foods provide adequate amounts of the required meal components for the age group being served. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 4

Records

37.75.401 TRAINING AND TRAINING RECORDS (1) A center must provide annual staff training on CACFP requirements, including those related to nutrition education, meal services and food safety.

(2) Each entity must provide free training to each day care home provider or center it sponsors under the CACFP. Initial training for each provider or center must occur before any meal or snack is served for which CACFP reimbursement is claimed.

(3) Training sessions must be provided at least annually for each day care provider or sponsored center.

(4) An entity must document each training session by keeping on file:

(a) an agenda which lists the date, time, and location of each training session and the topic or topics discussed;

(b) the names of the training facilitator or facilitators and their qualifications;

(c) the anticipated educational outcomes for each training session; and

(d) a roster labeled with the course name and subject matter, signed by each training session participant.

(5) The following individuals must attend at least five hours per federal fiscal year of CACFP training provided by the department:

(a) the CACFP program director from each type of independent center;

(b) one cook or nutrition coordinator from each independent center;

(c) the CACFP program director from each sponsoring organization sponsoring a child care center;

(d) one cook or nutrition coordinator from each sponsoring organization sponsoring child care centers; and

(e) at least one other staff person from each center sponsored.

(6) Each sponsor of day care homes must provide, free of charge, a minimum of five hours of training to the day care home providers it sponsors concerning CACFP requirements, including those relating to nutrition education, meal service, and food safety. The training to be provided by the sponsor must be submitted to the department in a written training plan and must be approved by the department as part of its annual renewal packet and whenever the training content or method of providing the training changes. Sponsors shall provide the approved training frequently enough and in convenient locations so that day care home providers have a reasonable opportunity to participate in the training.

(7) Each sponsor must retain on site all information relating to training provided by that sponsor for a period of at least the three prior federal fiscal years, plus the current federal fiscal year. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.402 MILK PRODUCTION RECORDS (1) All reviews of centers performed by department staff and auditors under department contract will evaluate the milk purchase quantity documentation and compare it to the meals claimed that require a milk volume component.

(2) Notwithstanding any other rule, if enough milk is not purchased and documented to meet the minimum meal component milk volume requirement, a corresponding meal reimbursement disallowance shall be made. The milk volume requirements of 7 CFR 226.20 are hereby adopted and incorporated into this rule by reference. Copies of 7 CFR 226.20 (2002) are available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.403 RECIPES REQUIRED (1) All program providers or centers must maintain documentation as to the creditability of baked goods as a bread/bread alternate.

(2) Each day care center or day care home shall maintain documentation of bread/bread alternate ingredients. Documentation may include a recipe, food label, or child nutrition (CN) label for the food item. This documentation is to be used to assess whether the primary ingredient (by weight) of the item is whole-grain and/or enriched flour and therefore creditable as a bread/bread alternate.

(3) Examples of recipes/food labels that should be kept on file include but are not limited to the following:

- (a) banana/carrot/zucchini bread;
- (b) brownies/bars;
- (c) cookies;
- (d) gingerbread; and
- (e) granola bars.

(4) It is the responsibility of the provider or center to ensure that all items claimed as bread/bread alternates meet the criteria listed in the grains/breads section of "Crediting Foods in Child and Adult Care Food Program". The August 2001 edition of "Crediting Foods in the Child and Adult Care Food Program" is hereby adopted and incorporated by this reference. A copy of the grains/breads section of "Crediting Foods in Child and Adult Care Food Program" is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 5

Reviews

37.75.501 REVIEWS OF DAY CARE HOME SPONSORING ORGANIZATIONS (1) The department will conduct at least one review of each day care home sponsoring organization during each period consisting of two federal fiscal years (FFY) for sponsoring organizations with 100 or more homes. The department will conduct at least one review of each day care home sponsoring organization during each period consisting of three FFYs for sponsoring organizations with less than 100 homes.

(2) The sponsoring organization must ensure that all program records are available during any review. Program records include:

(a) documentation to substantiate that the procedures outlined in the sponsoring organization's current management plan have been and are being followed; and

(b) documentation of claims processed and fiscal activity for the three preceding FFYs, plus the current FFY.

(3) During the review of a sponsoring organization:

(a) if the sponsoring organization is found to be deficient and corrective action is required, the administrative portion of claims payments for that sponsoring organization may be withheld until the department verifies that the required corrective action is complete, up to a maximum of 45 days beyond the date of claim submission; and

(b) any request for income eligibility forms or any additional information requested by the department in a corrective action letter must be provided to the department within 30 days after the sponsoring organization receives the corrective action letter. All misclassified provider income eligibility forms must be corrected back to the date they were signed, or, in the case of tiering, correction must be made back to the date of the determination or the date first claimed. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.502 REVIEWS OF CENTERS AND SPONSORS OF CENTERS

(1) The department will conduct one announced or unannounced visit in each three year period.

(2) Information that must be available at the time of the visit includes but is not limited to the following:

- (a) attendance records and sign in/out sheets;
- (b) food receipts, by month of purchase;
- (c) food service labor documentation;
- (d) food production records, including written evidence of specific food quantities prepared;
- (e) income eligibility forms;
- (f) menus;
- (g) milk receipts, by month of purchase;
- (h) monthly financial reports; and
- (i) staff training records.

(3) If the center is found to be deficient and corrective action is required, claims payment may be withheld up to 45 days while the department verifies that the required corrective action is complete.

(4) If milk purchases are less than 100% of the required amount as set forth in 7 CFR 226.20, the department may require the center to provide receipts to the department documenting the milk purchases for the subsequent three months. Claims will be adjusted proportionately if less than 100% of the required amount is documented. Continued shortages of milk may extend this documentation and adjustment process. In addition, the department may pursue other legal remedies.

(5) Meal record deficiencies in meal production records shall result in corresponding meal reimbursement disallowances. If records are incomplete or missing, the department may require the center to provide additional months of production records to the department with the submission of the center's future claims. If documentation is not supplied in accordance with the requests, payment shall not be made and claims will be returned as incomplete. If meal records are not available on site at the time of the review, meals will be disallowed. In addition, the department may pursue other legal remedies.

(6) Income eligibility forms that are corrected in response to a corrective action plan must be copied and submitted to the department with all related claims. Failure to attach corrected income eligibility forms may result in the claim being returned unpaid as incomplete.

(a) All mis-classified income eligibility forms must be corrected back to the date of the signature of the adult household member on the forms. A provider shall provide all income eligibility forms not available on site at the time of a review pursuant to a corrective action plan.

(7) A visit to a child care center may be conducted by the department's CACFP staff approximately 90 days after the child care center's enrollment date. The purpose of the 90-day visit is primarily educational and is intended to ensure that the organization has established the appropriate files and procedures for successful CACFP operation.

(8) Each full month may be subject to review. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

Subchapter 6

Enforcement

37.75.601 APPEALS AND FAIR HEARINGS (1) Except as provided in (2), an entity may appeal an adverse administrative action through the department's office of fair hearings pursuant to the procedures provided in ARM Title 37, chapter 5. An entity must file a written request for an appeal within 15 calendar days of receiving notification of an adverse administrative action by providing the written request to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(2) A day care home may only participate in CACFP through a sponsoring organization. A participating day care home may appeal through the department's office of fair hearings when there is a determination to terminate the home's participation in the CACFP. All other adverse administrative actions taken against a day care home must be reviewed through the sponsoring organization's internal review process.

(3) Decisions made by food and nutrition services of the USDA pertaining to requests for exceptions to the claims submission deadlines are not subject to appeal through the state's administrative appeal process. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.602 CORRECTIVE ACTION PLAN (1) An entity receiving notice that it is seriously deficient, or deficient in some aspect of the CACFP, shall submit to the department a corrective action plan to correct the deficiency, postmarked within 30 days of receipt of the deficiency notice provided by the department. Any entity that fails to submit a timely corrective action plan will be determined to be seriously deficient, or if the original notice stated the entity was seriously deficient, the entity may be subject to termination in accordance with the provisions set forth in 7 CFR 226.6.

(2) All corrective action plans are subject to review and approval by the department. If a corrective action plan is rejected by the department, a revised corrective action plan that addresses the deficiencies in the original plan must be submitted to the department no later than 15 calendar days from the date of the notice of rejection of the original plan. Any entity that fails to submit an amended corrective action plan within 15 calendar days shall be determined seriously deficient, and may be subject to termination from the program.

(3) The department hereby adopts and incorporates by reference 7 CFR 226.6 (2002), which specifies the administrative responsibilities, including those when a serious deficiency exists, of a state agency administering the CACFP. A copy of 7 CFR 226.6 (2002) may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)

37.75.603 TERMINATION AND RE-ENROLLMENT OF A DAY CARE HOME PROVIDER (1) When a sponsoring organization terminates a day care home provider for being seriously deficient, the sponsoring organization shall send to the department a copy of the termination letter that is sent to the provider. Upon receipt of this notification, the terminated provider's name will be added to the state list of terminated providers, sent to all sponsoring organizations, and included on the national disqualified list.

(2) If a terminated provider wants to return to program participation, the provider must:

- (a) fully and permanently correct the serious deficiency;
- (b) provide proof that the provider is no longer listed on either the state or national disqualified list; and
- (c) contact the terminating sponsor and request re-enrollment.

(3) If the sponsor does re-enroll a provider who has been terminated for one or more serious deficiencies, the sponsor shall complete the following:

- (a) notify the state CACFP of the re-enrollment in writing;
- (b) visit the home at least twice per month for the first three months;
- (c) complete a parent survey at least once in the first three months;
- (d) during the second three months of re-enrollment, the sponsor must visit the home at least once a month; and
- (e) complete a parent survey at least once in the second three months.

(4) An entity or provider terminating operations with the CACFP while under corrective action will still be placed on the national disqualified list as well as the state list. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, 2003 MAR p. 981, Eff. 5/9/03.)